

AUG 10 2006

**FEDERAL ELECTION COMMISSION**  
**999 E Street, N.W.**  
**Washington, D.C. 20463**

FEDERAL ELECTION  
COMMISSION  
SECRETARIAT

2006 AUG 10 P 2:45

**FIRST GENERAL COUNSEL'S REPORT**

**SENSITIVE**

PRE-MUR: 433  
DATE RECEIVED: February 9, 2006  
DATE ACTIVATED: April 17, 2006  
EXPIRATION OF SOL: February 4, 2008

**SOURCE:**

**RESPONDENTS:**

Fieger, Fieger, Kenney & Johnson, P.C.

Current and former Fieger law firm attorneys:

Geoffrey Nels Fieger  
Vernon R. Johnson  
Todd J. Weglarz  
Rebecca S. Walsh  
Arnold J. Matusz  
Paul W. Broschay  
Robert M. Giroux  
Jeffrey A. Danzig  
Lloyd G. Johnson  
James J. Harrington, IV  
Tammy J. Reiss  
Victor S. Valenti  
Joseph Bird  
W. J. McHenry  
Jack Beam, Of Counsel

Other Fieger law firm employees:

Thomas E. Baulch, Building Manager  
Anna Huhta, Courier Supervisor  
Jill Brandana, Legal Assistant  
Jeffrey Cope, Project Manager  
Eric Donahue, Info Systems Manager  
Nancy Fisher, Office Manager  
Stephen A. Hnat, Jury Consultant  
Ann Marie Keith, Bookkeeper  
Michaelene Sowinski, Paralegal

10044261626

10044261627

Family members of current or former Fieger law  
firm attorneys and employees:

Kathleen Fieger  
Laura Bird  
Jessica Broschay  
Laura Broschay  
Wendy Danzig  
Chad Johnson  
Sean Johnson  
Sherry Giroux  
Erin Kenney  
Matthew Kenney  
Susan Kenney  
Darlene Matusz  
M. A. McHenry  
Ronald J. Walsh  
Christine Weglarz  
Rosa Bava-Valenti  
Renee Beam  
Shalina Kumar  
Theresa Santoli  
Ronald Brandana  
Jason J. Sowinski

**RELEVANT STATUTES  
AND REGULATIONS:**

2 U.S.C. § 441b  
2 U.S.C. § 441f  
11 C.F.R. § 110.4(b)

**INTERNAL REPORTS CHECKED:**

Disclosure Reports and FEC Contributor Data Base

**FEDERAL AGENCIES CHECKED:**

U.S. Department of Justice, Public Integrity Section

**I. INTRODUCTION**

On February 9, 2006, the Commission received a somewhat unusual \_\_\_\_\_  
submission from counsel representing the law firm of Fieger, Fieger, Kenney & Johnson, P.C.  
("the Firm") of Southfield, Michigan. According to the submission, the FBI and Department of  
Justice ("DOJ") are investigating whether the Firm made contributions to John Edwards for  
President ("the Edwards committee") through conduits. The Firm does not directly admit or

1 deny that it did this; rather, its counsel expresses his confidence that "an objective investigation  
2 would exonerate the firm of any wrongdoing." Attachment 1 at 2. Consequently, the Firm's  
3 counsel invites the Commission to conduct its own investigation of whether the Firm made  
4 conduit contributions.<sup>1</sup> The Firm's counsel indicates that, should the Commission find probable  
5 cause, the Firm would be interested in pursuing conciliation so that it may be weighed as a  
6 mitigating factor, pursuant to 2 U.S.C. § 437g(d)(3), by a federal court in imposing a criminal  
7 sentence.

8 The Firm's letter states that "[t]he FBI has already executed a search warrant of the  
9 firm's offices" and "the United States Attorney's office has subpoenaed many members of the  
10 firm to give grand jury testimony." Attachment 1 at 1. According to a media report, the FBI and  
11 IRS "seized corporate records from Fieger's law firm during a Nov. 30 search," and the grand  
12 jury "has subpoenaed more than 20 lawyers, employees, relatives and associates of Fieger."  
13 David Shepardson, *Testimony Starts in U.S. Jury Probe of Fieger*, DETROIT NEWS, Jan. 25, 2006.  
14 As reported by another paper, the investigation "is being directed out of the Justice Department's  
15 Public Integrity Section," and was "prompted by tips from people associated with Fieger's law  
16 firm." David Ashenfelter and Joe Swickard, *Fieger: I'm a Victim, Not a Criminal*, DETROIT  
17 FREE PRESS, Dec. 2, 2005.

18 The letter is premised on the mistaken belief that DOJ cannot pursue charges against it  
19 (and others) until after the Commission conducts its own investigation. The Firm's counsel

---

<sup>1</sup> Soon after receiving the letter, this Office contacted the Firm's counsel by telephone to request further information and documentation regarding the pending criminal investigation. Though the Firm's counsel initially agreed to provide more information, he later declined to do so, and has not communicated further with this Office. Therefore, given the Firm's decision not to cooperate further and the lack of any admission of misconduct,

---

10044261628

1 asserts that "[t]he conciliation process is a critical precursor to any criminal prosecution  
2 involving campaign contribution laws." Attachment 1 at 2. Although the Act endows the  
3 Commission with exclusive civil jurisdiction, and provides mechanisms for the Commission to  
4 refer or report matters to the DOJ, it nowhere makes the DOJ's exclusive jurisdiction over  
5 criminal enforcement of the Act dependent on prior action by the Commission. Moreover, while  
6 a defendant's compliance with a conciliation agreement between the defendant and the  
7 Commission shall be taken into account by a court in criminal proceedings and sentencing, *see*  
8 2 U.S.C. § 437g(d)(2) and (3), the U.S. Sentencing Guidelines explicitly state that such a factor  
9 is not taken into account where "the defendant began negotiations toward a conciliation  
10 agreement after becoming aware of a criminal investigation," as would be the case here. U.S.  
11 SENTENCING GUIDELINES MANUAL § 5E1.2 (2005).

12 As explained below, publicly available information indicates that there is a factual basis  
13 for the Commission to accept the Firm's invitation to investigate this matter. Accordingly, we  
14 recommend that the Commission open a MUR; find reason to believe that the Firm and two of its  
15 officers knowingly and willfully violated the Act in connection with contributions made to the  
16 Edwards committee; find reason to believe that 43 other individuals who may have been conduits  
17 for contributions to the Edwards committee from the Firm violated the Act; and authorize an  
18 investigation.

19 This Office has consulted with DOJ's Public Integrity Section to confirm that there is  
20 currently a "very active investigation" into the Firm's campaign contributions. DOJ is unable to  
21 provide an estimated timetable as to completion of its inquiry. We will continue to consult with

10044261629

DOJ regarding the status of their investigation and advise the Commission as to the prospects for an expedited global resolution as such information becomes available.

## II. FACTS

Fieger, Fieger, Kenney & Johnson, P.C. is a professional corporation, with Geoffrey N. Fieger listed as President, and both Vernon R. Johnson and Jeremiah J. Kenney listed as Vice Presidents. Commission records reflect that all 16 of the attorneys currently employed by the Firm, or employed by the Firm at the time of their contribution, as well as 30 other individuals who appear to be former Firm attorneys, current non-lawyer employees, and family members of current or former Firm attorneys and non-lawyers employees contributed to the Edwards committee in 2003.<sup>2</sup> Of these 46 contributors, 36 contributed the individual maximum amount of \$2,000 on one of three days, March 30, 31 or June 30, 2003. Further, 34 of these 46 contributors have no previous record of contributing to any Federal campaign. Thus, it appears that individuals associated with the Firm made \$93,500 in contributions to the Edwards committee in 2003. *See Charts of Fieger Law Firm and Related Contributions (Attachment 2).*

According to news accounts, the Federal criminal investigation stems from allegations made by Joseph Bird, a former attorney at the firm. Sarah Karush, *Lawyer Says Fieger Partner Told Him to Contribute to Edwards Campaign*, DETROIT NEWS, Dec. 3, 2005. Approximately two weeks after Mr. Bird joined the Firm in 2003, Vernon Johnson, a named partner and vice president of the Firm, allegedly told Mr. Bird that "he was expected to give to the Edwards

---

<sup>2</sup> The potential amount in violation includes a \$2,000 contribution from Jeremiah Joseph Kenney, a named partner of the Firm. We are making no recommendation regarding Mr. Kenney, who passed away in April 2005, but we are including the amount of his contribution in the total amount that might have been reimbursed.

10044261630

1 campaign.” *Id.* Bird claims that he brought in two \$2,000 checks, one from him and one from  
2 his wife, the next day, and that he received a reimbursement check for \$4,000 two days later. *Id.*  
3 The same news report states that Johnson denies the incident with Bird, and named partner,  
4 Geoffrey Fieger, claims Bird is a disgruntled former employee seeking revenge against the Firm.  
5 *Id.* Another news report, however, quoted Mr. Fieger as asserting that he gave bonuses to so-  
6 called “civic-minded employees” (without explanation as to the meaning of that term), and that  
7 he expected a grand jury indictment based on those bonuses. Joe Swickard, *Fieger: I Expect To*  
8 *Be Indicted*, DETROIT FREE PRESS, Jan. 17, 2006.

9 The Firm’s submission does not confirm, deny or make any substantive representation as  
10 to the allegations attributed to Mr. Bird in press reports.

11 **III. LEGAL ANALYSIS**

12 **A. 441f Violations**

13 If the Firm reimbursed contributions to the Edwards committee, then the Firm and the  
14 conduit contributors may have violated the Act. The Act prohibits any person from making or  
15 accepting a contribution in the name of another person. Likewise, persons are prohibited from  
16 knowingly permitting their names to be used to effect contributions made in the name of another  
17 person and from knowingly assisting in making such contributions. 2 U.S.C. § 441f; 11 C.F.R.  
18 § 110.4(b)(1)(iii).

19 The circumstances of this matter establish a basis for the Commission to find reason to  
20 believe and investigate. First, a former Firm attorney reportedly made specific allegations to  
21 Federal authorities that the Firm reimbursed campaign contributions to the Edwards committee  
22 from him and his wife. Second, although members of the firm denied Mr. Bird’s allegations in

10044261631

1 statements to the press, such denials are not repeated or adopted in the Firm's submission. Third,  
2 Mr. Fieger reportedly said in reference to the allegations that he gave "bonuses" to "civic-  
3 minded employees." Fourth, the Commission's records show a large number of maximum  
4 contributions made on the same days by individuals associated with the Firm, many of whom  
5 had never previously contributed to any Federal campaign. While the making of multiple  
6 contributions on the same day is not a sufficient basis in and of itself to establish reason to  
7 believe, it is relevant evidence that must be considered in connection with other circumstances, such  
8 as those present in this matter. Fifth, the Firm's letter acknowledges that the Commission may  
9 conclude there is probable cause to believe that it committed violations of the Act. Finally, there  
10 is an ongoing criminal investigation regarding these allegations.

11 Due to the inherently deceptive nature of conduit schemes, some of the respondents may  
12 have committed knowing and willful violations of the Act. See 2 U.S.C. §§ 437g(a)(5)(B) and  
13 437g(d). The knowing and willful standard requires knowledge that one is violating the law.  
14 See *Federal Election Commission v. John A. Dramesi for Congress Committee*, 640 F. Supp.  
15 985, 987 (D.N.J. 1986). A knowing and willful violation may be established "by proof that the  
16 defendant acted deliberately and with knowledge that the representation was false." *United*  
17 *States v. Hopkins*, 916 F.2d 207, 214 (5th Cir. 1990). An inference of a knowing and willful act  
18 may be drawn "from the defendant's elaborate scheme for disguising" his or her actions. *Id.* at  
19 214-15. Accordingly, the Firm, Mr. Fieger, and Mr. Johnson may have committed knowing and  
20 willful violations of the Act by devising and carrying out an illegal and inherently deceptive  
21 reimbursement scheme which included reimbursing employees and their family members in the  
22 form of "bonuses" for their campaign contributions.

10044261632

Based on all of the above, we recommend that the Commission find reason to believe that Fieger, Fieger, Kenney & Johnson, P.C., Geoffrey Nels Fieger, and Vernon R. Johnson knowingly and willfully violated 2 U.S.C. § 441f.

We also recommend that the Commission find reason to believe that the following individuals associated with the Firm violated 2 U.S.C. § 441f in connection with their possible participation as conduits in a reimbursement scheme: Todd J. Weglarz, Rebecca S. Walsh, Arnold J. Matusz, Paul W. Broschay, Robert M. Giroux, Jeffrey A. Danzig, Lloyd G. Johnson, James J. Harrington, IV, Tammy J. Reiss, Victor S. Valenti, Joseph Bird, W. J. McHenry, Jack Beam, Thomas E. Baulch, Anna Huhta, Jill Brandana, Jeffrey Cope, Eric Donahue, Nancy Fisher, Stephen A. Hnat, Ann Marie Keith, Michaelene Sowinski, Kathleen Fieger, Laura Bird, Jessica Broschay, Laura Broschay, Wendy Danzig, Chad Johnson, Sean Johnson, Sherry Giroux, Erin Kenney, Matthew Kenney, Susan Kenney, Darlene Matusz, M. A. McHenry, Ronald J. Walsh, Christine Weglarz, Rosa Bava-Valenti, Renee Beam, Shalina Kumar, Theresa Santoli, Ronald Brandana, and Jason J. Sowinski.

**B. 441b Violations**

Section 441b(a) of the Act prohibits corporations from making contributions or expenditures from their general treasury funds in connection with any Federal election, and also prohibits any officer from consenting to any contribution or expenditure by the corporation. Thus, in addition to facing potential liability for making contributions in the name of another, because the firm is an incorporated entity, and Mr. Fieger and Mr. Johnson as officers reportedly played important roles in the alleged reimbursement scheme, we also recommend that the Commission find reason to believe that Fieger, Fieger, Kenney, & Johnson, PC, as well as

10044261633



1 Geoffrey Nels Fieger and Vernon R. Johnson, knowingly and willfully violated section 441b(a)  
2 of the Act, by making and consenting, respectively, to prohibited corporate contributions.

3 **C. Edwards Committee**

4 Thus far we have not located any information indicating that the Edwards committee  
5 knew at the time of receipt that it may have received prohibited contributions. According to a  
6 press report, the Committee claims it "learned about the federal investigation through news  
7 reports," the Edwards campaign "went above and beyond legal requirements for campaign  
8 finance compliance," and "expected [Edwards'] supporters to adhere to the same standards."  
9 Sarah Karush, *Lawyer Says Fieger Partner Told Him to Contribute to Edwards Campaign*,  
10 DETROIT NEWS, Dec. 3, 2005. Accordingly, this Office makes no recommendations at this time  
11 with respect to the Edwards committee. Should we obtain evidence indicating that the Edwards  
12 committee violated the Act, we will make appropriate recommendations at a later time.<sup>3</sup>

13  
14  
15  
16  
17  
18

---

<sup>3</sup> Disclosure reports filed by the Edwards committee show that it returned \$4,000 in contributions to Joseph and Laura Bird on December 27, 2005, soon after Mr. Bird's allegations that he and his wife were reimbursed by the Fieger law firm were first reported by the news media. There is no indication that the Edwards committee refunded or disgorged any other contributions from individuals associated with the Firm. If additional information emerges from the criminal or Commission investigations, the Edwards committee may be obligated to make additional refunds. See 11 C.F.R. § 103.3(b)(2) (if at the time a contribution was received a committee determines that it did not appear to be made in the name of another, but later discovers that it is illegal based on new evidence not available at the time of receipt, the treasurer must refund the contribution within thirty days of the date on which the illegality was discovered).

10044261634

**V. RECOMMENDATIONS**

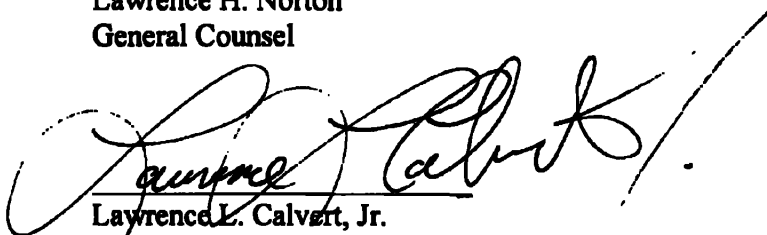
1. Open a MUR;
2. Find reason to believe that Fieger, Fieger, Kenney & Johnson, P.C., Geoffrey Nels Fieger, and Vernon R. Johnson knowingly and willfully violated 2 U.S.C. §§ 441b and 441f;
3. Find reason to believe that the following individuals violated 2 U.S.C. § 441f: Todd J. Weglarz, Rebecca S. Walsh, Arnold J. Matusz, Paul W. Broschay, Robert M. Giroux, Jeffrey A. Danzig, Lloyd G. Johnson, James J. Harrington, IV, Tammy J. Reiss, Victor S. Valenti, Joseph Bird, W. J. McHenry, Jack Beam, Thomas E. Baulch, Anna Huhta, Jill Brandana, Jeffrey Cope, Eric Donahue, Nancy Fisher, Stephen A. Hnat, Ann Marie Keith, Michaelene Sowinski, Kathleen Fieger, Laura Bird, Jessica Broschay, Laura Broschay, Wendy Danzig, Chad Johnson, Sean Johnson, Sherry Giroux, Erin Kenney, Matthew Kenney, Susan Kenney, Darlene Matusz, M. A. McHenry, Ronald J. Walsh, Christine Weglarz, Rosa Bava-Valenti, Renee Beam, Shalina Kumar, Theresa Santoli, Ronald Brandana, and Jason J. Sowinski;
4. Approve the attached Factual and Legal Analyses;<sup>4</sup>
5. \_\_\_\_\_
6. Approve the appropriate letters.

<sup>4</sup> We have attached the Factual and Legal Analyses for the Firm, Geoffrey Nels Fieger, and Vernon R. Johnson, and a sample Factual and Legal Analysis for conduits that we intend to send to the other respondents, changing only their names on the respondent line and in the recitation of the Commission's finding.

8/10/06  
Date



Lawrence H. Norton  
General Counsel



Lawrence L. Calvert, Jr.  
Deputy Associate General Counsel  
for Enforcement



Mark Shonkwiler  
Assistant General Counsel



Audra L. Wassom  
Attorney

10044261636

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33